

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)

PUBLIC UTILITIES COMMISSION)

Instituting a Proceeding to Investigate the)
Implementation of Feed-in Tariffs.)
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**TAWHIRI POWER LLC'S
COMMENTS TO STANDARD AGREEMENT FOR TIER 1 AND 2**

AND

CERTIFICATE OF SERVICE

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TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII:

Pursuant to the Hawaii Public Utilities Commission's (the "Commission") Order Setting Schedule filed herein on October 29, 2009 (collectively "Scheduling Order"), TAWHIRI POWER LLC ("TPL") hereby submits to the Commission its comments to the filing on January 7, 2010, of the Proposed Tiers 1 and 2 Tariffs (Proposed Tariffs, Alternative Tariffs, and Standard Contract) ("Proposed Tiers 1 and 2 Tariffs") from HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively the "HECO Companies"). However, TPL's comments herein will be limited to, and focused upon, only the "Schedule FIT Standard Agreement For Tier 1 And 2" included in the HECO Companies' Proposed Tiers 1 and 2 Tariffs ("Standard Agreement"). TPL's Consultant and Expert Witness, Dr. Mohamed El-Gasseir, has provided a substantial portion of the comments set forth hereinafter.

I. COMMENTS TO STANDARD AGREEMENT

There are several fatal flaws with Section 6 of the Standard Agreement proposed by the HECO Companies. Consequently, approval of the Standard Agreement as drafted would run afoul of the Commission's Decision and Order filed herein on September 25, 2009 ("FiT Order") because

the HECO Companies [were directed] to adopt standards that establish when additional renewable energy can or cannot be added on an island or region therein **without markedly increasing curtailment, either for existing or new renewable projects. FIT generation should meet new load requirements and displace fossil fuel generation. Accordingly, FIT projects should not meaningfully displace existing renewable energy generation.** For instance, minimum load standards could demonstrate whether additional wind generation could be added to the HELCO and MECO grids without harming reliability or directly leading to more curtailment of existing renewable during off-peak hours.¹

Therefore, it is questionable whether the Standard Agreement has "been developed to fully comply with the Commissions' directive to '*not interconnect projects that will substantially compromise reliability or result in an unreasonable costs to ratepayers or would lead to significant curtailment of new or existing renewable energy generators.*' (Decision and Order at 56)"²

One glaring defect in the proposed Standard Agreement relates to the provision whereby the HECO Companies would NOT be required to purchase energy from the FiT generators in cases where "purchases from [them] will result in costs greater than those which the [HECO Companies] would incur if [they] did not make those purchases, but instead generated an equivalent amount of energy [themselves]."³ This provision is not supported by the FiT Order because that order only requires the HECO Companies to favor their fossil fuel generators over

¹ FiT Order at 51 [emphasis added].

² HELCO Letter dated January 7, 2010 addressed to the Commission filed herein on January 7, 2010, at 2 [emphasis in original].

³ Standard Agreement at § 6(b).

FiT generation in situations where to do so would avoid “an **unreasonable cost** to ratepayers”.⁴

Moreover, the Commission specifically designed the FiT Program to encourage renewable generation and acknowledged that the costs thereof may be more than those of fossil fuel generation.⁵ This commitment was also made by the HECO Companies.⁶

A second (2nd) flaw in the proposed Standard Agreement is that Section 6 thereof will discourage economic investment in renewable generation by imposing potential curtailment of FiT generation under a host of conditions to be determined in the sole and absolute discretion of HECO, HELCO, and/or MECO, without compensation, except in the limited instance where the host utility fails to notify the FiT generator of a pending economically motivated curtailment.⁷ If implemented as drafted, the Standard Agreement could substantially increase the FiT rates that renewable energy developers require to finance their projects and compensate for the increased costs of capital, while earning reasonable rates of return on their investments (in the face of revenue erosion risks due to potential production curtailments). The end result is inefficient and potentially undersubscribed FiT programs.

A third (3rd) concern with the proposed Standard Agreement involves the potential that the FiT generator may receive compensation for economic curtailment even should the utility fail to provide at least a twenty-four (24) hour advance notice of the pending curtailment.⁸ Such situations will readily occur because the host utility would instinctively rely upon a number of reasons for which the imposed curtailment would appear to be justified (i.e. system emergency,

⁴ FiT Order at 56 [emphasis added].

⁵ See e.g., Order Initiating Investigation filed in this Docket on October 24, 2008 (“Initial Order”) at 1-3.

⁶ See Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the HECO Companies dated October 20, 2008 (“Energy Agreement”).

⁷ See e.g., Standard Agreement at § 6(b).

⁸ Standard Agreement at § 6(b).

operating conditions on its system, etc.).⁹ Challenging the propriety of that host utility's actions would be a lengthy and frustrating effort as currently experienced by TPL.

Fourth, despite the apparent attempt in the Section 6 proposal to spread curtailment risks among the stakeholders, there will be instances where the host utility may be unable to equitably allocate the required amounts of production cuts between ALL Fit generators (e.g., because of technical and/or cost considerations). Consequently, permitting the HECO Companies to curtail some generators, but not others, without compensation for such curtailment, would result in a *de facto* endorsement of blatant discrimination among FiT generators and against third-party independent power producers.

Lastly, the Standard Agreement has yet to describe the methodology for allocating production curtailments amongst non-utility generators. TPL submits this is a crucial component of the FiT Program and must be resolved well in advance of the implementation of the Tier 1 and 2 Tariffs. Presently, there is a procedure for allocating production cuts between existing independent power generators based upon contract seniority rules. However, the entry of new FiT generators would vastly complicate present practices. Furthermore, the HECO Companies will be at odds with determining the order of curtailment on the basis of contracting chronology and the desirability of curtailing specific units on the basis location and system requirements, and benefits.

TPL submits the solution to the above problems with Section 6 of the Standard Agreement as proposed by the HECO Companies is to permit the host utility to curtail any renewable generator **only for technical reasons** in a fully transparent manner (i.e. system reliability/security) and guaranteeing compensation for the imposed production cuts at the stated

⁹ *Id.* at § 6(a).

contact prices.¹⁰ The impact on ratepayers of undelivered energy may be monitored, managed and mitigated both in the short and long run. If the curtailed amounts are negligible, the impacts will be minimal. On the other hand, should system rigidity and constraints create considerable cut backs, the Commission may consider suspending further enrollment of new FiT generation. As a result, the Commission would also have a solid monetary benchmark to rely upon in directing the HECO Companies invest in system upgrades.¹¹

II. CONCLUSION:

For all the above reasons, the Commission is requested to direct the HECO Companies to revise Section 6 of the Standard Agreement to account for the above.

Respectfully submitted.

DATED: Honolulu, Hawaii, January 21, 2010.



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¹⁰ At least with respect to independent power producers as explained in the prior filings of TPL. See e.g., Exhibit "A" at 6-8, attached to Tawhiri Power LLC's Final Statement Of Position Regarding Feed-In Tariff Designs, Policies And Specific Pricing Proposals filed herein on March 30, 2009;

¹¹ *Id.* at 9-10

CERTIFICATE OF SERVICE

The foregoing Opening Statement Of Position was served on the date of filing by hand delivery or electronically transmitted to each such Party.

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